UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. COMPUTER ASSOCIATES INTERNATIONAL, INC. and PLATINUM *TECHNOLOGY* INTERNATIONAL, *INC.*, Defendants.	Civil Action No. 1:99CV01318 JUDGE: Gladys Kessler DECK TYPE: Antitrust DATE STAMP:

MOTION TO CONFIRM THE APPOINTMENT OF THE TRUSTEE

The United States requests that the Court enter an Order, attached hereto as Exhibit A, confirming the appointment of Hambrecht & Quist LLC (hereinafter "H&Q") as the trustee appointed pursuant to the proposed Amended Final Judgment upon the terms and conditions specified in the Engagement Letter attached as Exhibit B. In the event that the Court determines to hold a hearing on this motion, the United States requests that such hearing be scheduled on an expedited basis.

1. In the Hold Separate Stipulation and Order, filed on May 25, 1999, and entered as an Order by the Court on May 26, 1999 (the "Hold Separate"), defendants agreed to abide by and comply with the provisions of the proposed Final Judgment, and any amended proposed Final Judgment agreed upon by the parties and submitted to the Court, "as though the same were in full force and effect as an order of the Court." (Hold Separate at §§ IV (B), (D)).

2. On May 25, 1999, the parties filed a stipulated proposed Final Judgment. On June 8, 1999, the United States filed an Uncontested Motion to Substitute Amended Final Judgment, with defendants, pursuant to the Hold Separate, having no objection to the motion. Defendant Computer Associates International, Inc. ("CA") has, therefore, agreed to abide by the proposed Amended Final Judgment (hereinafter "AFJ") as though it were an Order of this Court.

3. According to the terms of the proposed AFJ, certain products and associated assets to be acquired by defendant CA as a consequence of its $3.5 billion acquisition of PLATINUM *technology* International, *inc*. were to be divested. These assets consist largely of mainframe systems management software products. The "essence of this Amended Final Judgment is the prompt and certain divestiture of the identified software and associated assets to assure that competition is not substantially lessened;" (AFJ at Third Precatory Clause), and for this reason, the proposed AFJ required these software products to be divested by a trustee selected by the United States.

4. Under the proposed AFJ, the United States had the right to select the trustee "at its sole discretion." (AFJ at § IV(A)). Defendant had the right to object to the selection of the trustee only on grounds of irremediable conflict of interest, such objection to be made within five business days. (AFJ at § IV(A)). The selection of a trustee by the United States at its sole discretion to accomplish the divestiture was a critical aspect of the proposed settlement. This condition was to ensure that the divestiture would be accomplished quickly by putting the trustee in place promptly with incentives to accomplish the divestiture quickly and so that the divestiture would be conducted in a fair and neutral manner, allowing the assets to be sold to a buyer that would fulfill the requirements of the proposed AFJ that the divestiture be performed "in the manner that is most conducive to preserving and maintaining competition." (AFJ at § IV (B)).

Speed in accomplishing the required divestiture is especially important in this case, because a prolonged process leaving these software products in uncertain status under the Hold Separate is likely to reduce their competitiveness in the market.

5. On June 1, 1999, the United States notified defendant that it had selected H&Q as the trustee. H&Q is an investment banking firm with substantial specialized experience in the software industry and has successfully represented buyers and sellers in numerous software industry mergers and acquisitions. Defendant made no objection to the selection of H&Q within the specified five-day period.

6. With respect to compensation of the trustee, the proposed AFJ provides that the trustee "shall serve at the cost and expense of Computer Associates, on such terms and conditions as the plaintiff approves" and that the "compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price obtained and the speed with which divestiture is accomplished." (AFJ at § IV(C)).

7. Defendant and H&Q have engaged in negotiations relating to the terms and conditions of an engagement letter (agreement) with respect to H&Q's services as trustee to accomplish the divestiture of the specified assets. Defendant and H&Q have agreed except with respect to the terms of compensation to be paid to H&Q for successful accomplishment of the divestitures. Defendant continues to refuse to execute the proposed engagement letter.

8. The United States, pursuant to Section IV(C) of the proposed AFJ, has approved the terms and conditions for engagement of H&Q as trustee as contained in the proposed engagement letter executed by H&Q attached as Exhibit B hereto. The United States has concluded that the terms and conditions relating to compensation in the proposed engagement letter are consistent

with the purpose of the proposed AFJ to assure the "prompt and certain" divestiture of the specified assets (AFJ at Third Precatory Clause) "in the manner that is most conducive to preserving and maintaining competition" in the markets for the divested products. (AFJ at § IV(B)). The United States further maintains that the proposed terms of compensation are consistent with the requirement that the trustee's compensation be "reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price obtained and the speed with which the divestiture is accomplished." (Id.) The fee schedule in the proposed engagement letter provides financial incentives both for prompt success in achieving the divestiture(s) as well as maximizing the price(s) to be paid for the assets. The proposed fees for successful divestiture for each Divested Product are reasonable, given the nature of the work to be performed, including the substantial possibility of the need to negotiate and execute multiple purchase transactions, and are within customary investment banking industry fee levels for H&Q and similar investment banking firms. (See attached Exhibit C).

9. Attached hereto, as Exhibit C, is the Declaration of David Golden, Co-Director of Investment Banking, Hambrecht & Quist LLC. Mr. Golden's Declaration provides information on H&Q's qualifications to be trustee, the work to be performed, and H&Q's proposed compensation.

10. Defendant's refusal to execute the engagement letter on the terms and conditions approved by the United States pursuant to Section IV (C) of the AFJ directly contravenes Section IV (A) of the AFJ, which clearly and explicitly grants to the United States the right to select the trustee "at its sole discretion." By refusing to execute the engagement letter approved by the United States, defendant has arrogated to itself the right to veto the selection of the trustee, which

result is directly contrary to the express language and obvious meaning of Section IV (A). Clearly, the United States cannot exercise its specifically-negotiated and explicit right to select the trustee if defendant can refuse to enter an engagement letter approved by the United States pursuant to Section IV (C). Moreover, defendant's refusal to enter the engagement letter has delayed, and continues to delay, the accomplishment of the trustee's work and is extending the time required to accomplish the divestiture in direct opposition to the proposed AFJ's clear purpose to accomplish the divestitures quickly.

11. Counsel for the United States certifies that the United States has engaged in good-faith discussions with opposing counsel as required by Rule 108 (m) of the Rules of the U.S. District Court for the District of Columbia, and although some issues have been resolved as a consequence of such discussions, defendant has refused to execute the engagement letter attached as Exhibit B. Defendant opposes the motion.

Therefore, the United States moves for the prompt entry of an Order in the form attached hereto, confirming the appointment of H&Q as trustee pursuant to the terms and conditions as specified. In the event that the Court determines not to enter the Order without a hearing, the United States requests that such hearing be expedited and set for the earliest possible date.

Counsel for defendant does not oppose the request of the United States for expedition in the event of a hearing on the motion.

Respectfully submitted,

_____/s/_____

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Dated: June 28, 1999

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ORDER TO CONFIRM THE APPOINTMENT OF THE TRUSTEE

The Court ORDERS as follows:

1. Plaintiff's Motion to Confirm the Appointment of the Trustee is GRANTED; and

2. Hambrecht & Quist LLC is appointed trustee pursuant to the proposed Amended Final Judgment upon the terms and conditions of the letter of engagement attached hereto.

_____
UNITED STATES DISTRICT JUDGE

Dated:

CERTIFICATE OF SERVICE

The undersigned certifies that he is a paralegal employed by the United States Department of Justice, and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that on June 28, 1999, he caused true copies of the MOTION TO CONFIRM THE APPOINTMENT OF THE TRUSTEE to be served upon the person in the manner stated below:

Counsel for Computer Associates International, Inc. and PLATINUM *technology* International, *inc*.

Richard L. Rosen, Esq.
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004

(by hand delivery)

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed in Washington, D.C., this 28th day of June, 1999.

/s/
Steven J. Duplicki